

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

\* \* \* \* \*

BILL BODINE,	)	
	)	
Appellant,	)	
	)	OSPI 212-92
vs .	)	
	)	<b><u>DECISION AND ORDER</u></b>
BOARD OF TRUSTEES, MADISON COUNTY	)	
SCHOOL DISTRICT NO. 52,	)	
	)	
Respondent.	)	

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**FACTS**

Bill Bodine, a tenured teacher for Madison County School District No. 52 [hereinafter "the School District"] is appealing the August 18, 1992, order of Madison County Superintendent of Schools' Jacqueline Pace. After a hearing June 12, 1992, Superintendent Pace upheld the School District's decision not to offer Mr. Bodine a full-time contract.

In April, 1992, Mr. Bodine held a teaching certificate with endorsements in P.E. and math 7-12. Following the procedural requirements of §§ 20-4-203 and 204, MCA, the School District accepted the recommendation of the District Superintendent to terminate him. The stated reasons were his physician advised him to stop teaching P.E., his only other endorsement was math, he did not have seniority over the other District math teachers and he refused a part-time math position.

Bodine appealed to the County Superintendent in May, 1992. On June 3, 1992, he accepted the School District's half-time contract

offer to teach three math classes. By the time of the June, 1992, hearing the issue for review was whether the School District acted properly in reducing a tenured teacher's employment from full-time to half-time. After hearing the matter, the County Superintendent upheld the School District.

Mr. Bodine appealed to the State Superintendent raising the following issues:

1) the County Superintendent's findings of fact are clearly erroneous; and

2) the County Superintendent's conclusions of law incorrectly limit the scope of tenure.

#### STANDARD OF REVIEW

This Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, 786 P.2d 1164, 241 Mont. 274 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 714 P.2d 151, at 153, 220 Mont. 214, at 217 (1986).

Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 803 P.2d 601, at 603, 245 Mont. 470, at 474 (1990).

## DECISION AND ORDER

The County Superintendent's order upholding the School District Trustees' decision not to offer a full-time teaching contract to Bill Bodine is AFFIRMED.

## DISCUSSION

Issue 1. Are the findings of fact clearly erroneous? Mr. Bodine argues that some of the findings incorporate conclusions of law. That alone would not establish grounds for reversing an administrative order. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." Wage Appeal v. Board of Personnel Appeals, 676 P.2d 194, at 198, 208 Mont. 33, at 40 (1984). State Compensation Mutual Insurance Fund v. Lee Rost Logging, 827 P.2d 85, at 88, 252 Mont. 97, at 102 (1992).

Substantial, credible evidence supports the County Superintendent's relevant findings. At the time of the hearing, Mr. Bodine had a Montana teaching certificate with endorsements to teach K-12 P.E. and 7-12 math [Tr., p. 831 and he had taught P.E. for many years.

During the 1987-1988 school year, he had injured his back while coaching wrestling. [Tr., p. 121. He continued to teach P.E. but his back condition deteriorated and his doctors suggested limiting lifting, looking up, and climbing. [Tr., pp. 22, 431. During school year 1991-1992, he was assigned 2 math and 5 P.E.

classes. He was unable to teach the P.E. classes after December, 1991. He began daily physical therapy and taught half time. He was paid on a half-time basis and drew sick leave benefits until April 24, 1992, when his sick leave was exhausted.

In the spring of 1992 his doctors recommended, and he requested, that he no longer teach P.E. [Exhibits G, I, L, and Tr. pp. 54, 84, 85]. The only other teaching endorsement Mr. Bodine had was 7-12 math.

The anticipated high school enrollment for 1992-1993 was 85 students. [Tr., p. 1011. Counting Mr. Bodine, the School District had three tenured teachers with math endorsements who were teaching math classes. Mr. Bodine had the least seniority. [Exhibits Q, R, and Tr., pp. 93, 94]. The District also had a principal with a K-8 endorsement teaching 7th grade math. Mr. Bodine was offered a contract for 3 math classes by shifting the math class from the principal. [Tr., p. 96]. He declined (but later accepted) the contract.

Prior to beginning the process of issuing contracts, the District told Mr. Bodine it was willing to not re-hire a non-tenured teacher if he offered a plan for broadening his endorsements by taking additional college credits before the 1992-1993 school year began. [Tr., p. 103]. Mr. Bodine did not offer such a plan.

Mr. Bodine argues that the County Superintendent did not give enough weight to the fact that in the past, the School District assigned him to teach physical science, a class he was not endorsed

to teach. While it is factually true that, in the past, the School District assigned Mr. Bodine to teach classes he was not certified to teach, that fact is irrelevant. The School District's errors in the past do not create an employment right for Mr. Bodine.

State law and administrative rules require school districts to assign certified teachers to the class level and subject matter they are endorsed to teach. Sections 20-2-121 and 20-4-106, MCA, Rules 10.55.707 - 708 and 10.57.301, ARM. To be endorsed to teach physical science all Montana teachers must satisfy the certification and requirements of the Board of Public Education (Rules 10.57.101, et seq., ARM). The fact that in the past the School District assigned him to teach a subject he was not endorsed to teach does not create an endorsement to teach in that area.

Issue 2. Do the County Superintendent's conclusions of law incorrectly limit the scope of tenure? Mr. Bodine argues that the school failed to make reasonable employment accommodations for him and that failure violates the tenure law. The facts in this case do not establish a failure to make a reasonable accommodation. Mr. Bodine asked to be relieved of his P.E. classes. The School District did so and offered him all the classes available in his other endorsement area.

Whether or not reasonable accommodation occurred, however, is irrelevant to the scope of tenure law. The County Superintendent of School's jurisdiction is limited to school controversies. She  
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does not have the power to resolve claims arising out of Title 49, MCA. Debra Steffani Irving v. School District No. 1-1A, Valley County, 813 P.2d 417, 248 Mont. 460 (1991).

In Harris v. Trustees, Cascade County School Districts No. 6 and F, 786 P.2d 1164, 241 Mont. 274 (1990), school trustees eliminated a tenured teacher's full-time position because of legitimate financial constraints then hired another teacher for a half-time position teaching the same subject. The Court considered financial constraints to be good cause for the termination of the full-time position but required that the trustees hire the terminated teacher for the part-time position.

In this case, Mr. Bodine's lack of endorsement in any area that the School District could use a full-time teacher is good cause for termination of his full-time tenure position. The School District was required to offer him the half-time math position that was available and did so. The County Superintendent correctly held that none of his employment rights as a tenured teacher were violated.

DATED this 26 day of April, 1994.

Nancy Keenan  
NANCY KEENAN

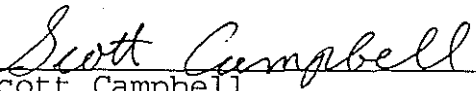
**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 26th day of April, 1994, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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